89-687

Supreme Court, U.S.
FILED
OCT 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LINDA DIANE CLARK,

Petitioner

vs.

THE STATE OF IOWA,

Respondent

ON APPEAL FROM THE SUPREME COURT OF IOWA

PETITION FOR WRIT OF CERTIORARI

LINDA DIANE CLARK
306 South Second Avenue
Marshalltown, Iowa 50158
(515) 753-8915

October 25, 1989

QUESTION PRESENTED

A. DOES FURTHERANCE OF PUBLIC SAFETY AND WELFARE VIOLATE AN INDIVIDUAL CITIZEN'S OPINION OF PERSONAL SECURITY JUSTIFY ABROGATING THE BILL OF RIGHTS BY PENAL REGULATION OF NON SEAT BELT USAGE.

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QUESTION PRESENTED

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PETITION FOR WRIT OF CERTIORARI

ON APPEAL FROM THE SUPREME COURT OF IOWA

Petitioner, Linda Diane Clark a threatened citizen respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Iowa Supreme Court of the constitutionality of Iowa Code Section 321.445 mandatory seat belt usage entered September 18, 1989.

I.

OPINION BELOW

The order of the Court denying discretionary review is attached as Appendix A.

II.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257 (a). The record reflects a reasonable challenge and a defense that was repeatedly denied.

III.

CONSTITUTIONAL PROVISION INVOLVED

The Bill of Rights safeguard the citizen to void all state legislation that impairs the privileges of citizens private rights in this instance the Fourth, Fifth, Ninth and Fourteenth Amendments. Their pertinent text set forth in the Appendix B. The state statute in violation appears as Appendix C.

IV.

STATEMENT OF FACTS

On April 26, 1988 Plaintiff was ticketed for violation of Iowa Code Section 321.445 mandatory seat belt use while traveling as a passenger instructing her disabled daughter, exempt from the statute, to drive. It was the intention to comply with the exemption subsection B of the code. (App. C-2)

On June 10, 1988 by Motion for Advance Rule On Evidence Plaintiff attempted to offer preponderance of evidence to show the need

for personal discretion in this safety issue. June 22, 1988 the federal question of unconstitutionality was raised by Motion which was overruled and Plaintiff admonished to make no mention in the presence of the jury of these matters. (App. A)

The State was allowed assumption of legislative intent in interpretation of the law. The jury was instructed that Plaintiff not doing the work intended in the exemption. This in error to legal definition and law. On July 1, 1988 the jury found Plaintiff guilty despite truth finding safeguards. This verdict was appealed as to error, in officer testimony for reason of the seizure, as well as the denial of constitutional challenge and vagueness of the statute. The verdict confirmed, Application For Discretionary Review was taken October 21, 1988.

The prejudicial refusal of the Iowa Supreme Court to allow a complete defense of

issues left unraised in STATE V. HARTOG, 440 N.W. 2d 852 has resulted in a denial of due process causing harm to the Plaintiff by error in ruling.

Thousands of words written by this Court preserving the intent of the Constitution supersede legislative codes which are subject to revision with the changing course of events. The Fourteenth Amendment was clearly designed to place limits on state action adverse to individuals. (App. B-2) This penal regulation constitutes state interference with bodily integrity since it requires people to put themselves at risk of receiving seat belt induced injuries whenever they choose to travel in a motor vehicle. Private property (our body) seized en mass under guise of protecting public safety and welfare. This statute a penal regulation is focused primarily on the enforced protection by the

individual of his own person while available evidence proves that seat belt use can have the opposite effect and cause injury to people on the highway. An offense committed to use personal discretion to prevent injuries or possible death as in this case.

Plaintiff may no longer exercise discretion in her right to travel as recognized this Court ruled KENT V. DULLES, 357 U.S. 116, 125-26 "The right to travel," may be as close to the heart of the individual as the choice of what he eats, or wears, or reads." The right to travel cannot be deprived without Due Process under the Fifth Amendment. (App.B) Plaintiff is no longer secure in her vehicle as this person was unreasonably seized by arbitrary and capricious law enforcement. The statute exemptions not all readily visible allows suspicion to search and unlawfully detain citizen's in compliance. The

exemptions deny Plaintiff equal protection as she not allowed discretion in personal safety as those exempt.

This Court ruled CHAMBERS V. MARONEY, 399 U.S. 42, 26 L.Ed.2d 419, 90 SCt. 1975 "Whether, since automobiles were not in existence at the time of the adoption of the Fourth Amendment, the Fourth Amendment (App.B) should, by necessary implication, be extended to cover automobiles even if automobiles do not fall within the words "persons, houses, papers, and effects." The people as power of government did not cause this personal regulation. It was a result of Federal Register/ Vol. 49, NO. 138, (1984) MOTOR VEHICLE MFRS. ASS'N V. STATE FARM MUT., 103 S.Ct. 2856 (1983); CHRYSLER CORP. V. DEPT. OF TRANSPORTATION, 472 F.2d, at 672-673. Mandatory seat belt laws were never enacted for safety rather to offset a Federal design standard.

These laws occurred because of D.O.T. interpretation of the case decided by this Court. This Court's directive to D.O.T. did not instruct D.O.T. to employ mandatory seat belt laws as part of its rule making. The fact that this Court's decision by implication establishes a need for this Court to review the issue of mandatory seat belt laws and their effect. Many Court rulings have determined the very rights affected life, liberty, property, safety, happiness, and equal protection by this penal regulation of travel. A statute which oversteps constitutional boundaries cannot be upheld, even if the Court should be in sympathy with its purpose when state statutory classifications approach sensitive fundamental personal rights. No person in pursuit of a lawfully permitted activity must be subjected to a penal sanction for refusal to comply

with legislation regulating that activity when to comply would render one's person at risk of injury. The only traffic regulation by compliance posing a direct risk to the individual. This violates security and personal opinion of safety meaning freedom from danger and this is where the statute is oppressive.

Justice Robert H. Jackson "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." GOBITIS, 319 U.S. 624, 642,

87 L.Ed. 1628, 1639, 63 SCt. 1178, 147 ALR 674, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

"A Free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all. Our Constitution relies on our electorate's complete ideological freedom to nourish independent and responsible intelligence and preserve our democracy from that submissiveness, timidity and herdmindedness of the masses which would foster a tyranny of mediocrity.

The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored." as ruled AMERICAN COMMUNICATIONS ASS. V. DOUDS, 339 U.S. 382, 422, at 442, 443, 94 L.Ed. 925, 956, at 966, 967, 70 SCt. 674.

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF STATE ACTION AS REGARDS INALIENABLE RIGHTS OF THE INDIVIDUAL CITIZEN.

When state regulation causes injury and death by an unproven speculative measure of safety a justiciable controversy exists.

B. IOWA COURT RULES DRIVING IS A PRIVILEGE TO REGULATE.

This regulation must be reasonable and appropriate for the citizen, protected by the Bill of Rights, allowed to challenge and disprove by facts when fundamental rights are involved. This motor vehicle regulation is different from all others as it penalizes, places at risk and does not regulate the competency of vehicle operation to decrease accident causes.

Over 400,000 petition signers, Plaintiff included, could not repeal the statute as states with referendum. Plaintiff forced to criminal status this Court the last jurisdiction to afford relief for security and preservation of our rights to travel, life,

liberty, pursuit of safety, happiness, equal protection and due process recognized by thousands of rulings from this Court, affording the Constitution, as a continuing instrument of government.

VI.

CONCLUSION

This case presents an important constitutional issue regarding the exact boundaries of the public safety when individual opinion of safety and security are involved. This issue has established a dangerous precedent which if not clarified, other courts might unwisely regulate protected areas of freedom.

Respectfully submitted,

Linda Diane Clark

Linda Diane Clark
306 South Second Avenue
Marshalltown, Iowa 50158
(515) 753-8915

DATED: October 16, 1989

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LINDA DIANE CLARK,

Petitioner

vs.

THE STATE OF IOWA,

Respondent

ON APPEAL FROM THE SUPREME COURT OF IOWA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

LINDA DIANE CLARK
306 South Second Avenue
Marshalltown, Iowa 50158
(515) 753-8915

October 16, 1989

APPENDIX A

IN THE SUPREME COURT OF IOWA

No. 88-1524

Marshall County District Court No. 4100-0488

ORDER

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LINDA DIANE CLARK,

Defendant-Appellant.

FILED

SEP 18, 1989

This matter comes before the court, Larson, Lavorato, and Snell, JJ., upon the defendant's motion for reconsideration en banc of this court's order entered on June 30, 1989, denying her application for discretionary review. The defendant's application for discretionary review challenges the constitutionality of Iowa Code section 321.445, the mandatory seat belt law.

We treat the defendant's motion for reconsideration as a motion to review the order of single justice pursuant to Iowa Rule of Appellate Procedure 22 (f). In view of our decision in State v. Hartog, 440 N.W.2d 852 (Iowa 1989) upholding the constitutionality of the mandatory seat belt law, the defendant's challenge to the same statute would not be successful. Consequently, the order entered on June 30, 1989, denying the defendant's application for discretionary review is hereby confirmed as the order of this court.

Dated this 18th day of September, 1989.

THE SUPREME COURT OF IOWA

By/s/Bruce M. Snell Jr.

Bruce M. Snell,Jr.,Justice

Copies to:

Linda Diane Clark
306 S. 2nd Ave.
Marshalltown, IA. 50158

Mark Hunacek
Assistant Attorney General
Dept. of Transportation
800 Lincoln Way
Ames, IA 50010

Marshall County Attorney
Marshall County Courthouse
Marshalltown, IA 50158

Clerk of District Court
Marshall County Courthouse
Marshalltown, IA 50158

APPENDIX A CONT.

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Supreme Court No.88-1524

Plaintiff-Appellee, Marshall County District Court

vs. No.4100-0488

LINDA DIANE CLARK, MOTION FOR RECONSIDERATION EN BANC

Defendant-Appellant.

COMES NOW, the Defendant-Appellant, Linda Diane Clark, does state in good faith the Court has overlooked the following in denial of discretionary review by this Court's order entered June 30, 1989:

1. A passenger has standing to challenge the constitutionality of a stop of the vehicle in which she was riding as cited in State v. Eis, 348 NW2d 224 (Iowa 1984)

2. Is reversible error, that the court was allowed assumption and perception of intent of Iowa Code section 321.445, to deny Defendant's offered evidence of the limited

safety value of seat belts. This issue left unaddressed in State v. Hartog.

3. The vagueness of the statute has merit for review as overbroad and invading the area of protected freedoms, ie. life, liberty, pursuit of safety and happiness as well equal protection of the law, specifically afforded protection by the Constitution. This statute different from other motor vehicle regulation, as well as the case before the bench.

WHEREFORE Defendant prays the Court review in substance the entire record in this case will declare issues are sufficiently different demand grant of review for redress of invasion affording equal protection of the law without prejudice.

RESPECTFULLY SUBMITTED

/s/ Linda Diane Clark

Linda Diane Clark
306 South Second Avenue
Marshalltown, IA. 50158
Telephone: (515)753-8915

Copies to:

Thomas J. Miller
Attorney General of Iowa

Mark Hunacek
Assistant Attorney General
Iowa Dept. of Transportation

Paul G. Crawford, Assistant
Marshall County Attorney

Clerk of District Court
Marshall County Courthouse

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on July 5, 1989, I served this document by mailing a copy to all other parties in this matter listed above at their respective addresses postage paid.

I further certify that on July 5, 1989, I did file this document by mailing 3 copies of it to the Clerk of the Supreme Court, Statehouse, Des Moines, Iowa 50319 postage paid.

/s/ Linda Diane Clark

APPENDIX A CONT.

IN THE SUPREME COURT OF IOWA

No. 88-1524

Marshall County District Court No. 4100-0488

ORDER

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LINDA DIANE Clark,

Defendant-Appellant.

FILED

JUN 30 1989

This matter comes before the court on the defendant's objection to this court's order entered on December 16, 1988, and confirmed by a three-judge panel of this court on February 23, 1989, staying further proceedings in this case pending resolution of No. 88-603, State v. Hartog. This case and the Hartog case both presented challenges to the constitutionality of Iowa Code section 321.445, the mandatory seat belt law. The

State has filed a resistance to the objection.

After the defendant's objection was filed, this court entered a ruling in the Hartog case determining that the mandatory seat belt law was constitutional. Although the issues in the present case are stated somewhat differently than the Hartog case, they are sufficiently similar to determine that the result in this case would be the same as the Hartog case. Consequently, the stay entered by this court on December 16, 1988, is hereby lifted and defendant's application for discretionary review is hereby overruled and denied.

The clerk shall promptly issue procedendo on this case.

Dated this 30th day of June, 1989.

/s/ James H. Andreasen
Justice, Supreme Court
of Iowa

Copies to:

Mark Hunacek
Assistant Attorney General
Department of Transportation
800 Lincoln Way
Ames, IA 50010

Linda Diane Clark
306 South Second Avenue
Marshalltown, IA 50158

Marshall County Attorney
Marshall County Courthouse
Marshalltown, IA 50158

Clerk of District Court
Marshall County Courthouse
Marshalltown, IA 50158

APPENDIX A CONT.

IN THE SUPREME COURT OF IOWA

No. 88-1524

Marshall District Court No. 4100-0488

ORDER

STATE OF IOWA,

Plaintiff-Appellee,

FILED

FEB 23 1989

vs.

LINDA DIANE CLARK,

Defendant-Appellant.

Defendant has applied for discretionary review following her conviction of violating Iowa's seat belt statute. See Iowa Code sec. 321.445 (1987). The State resisted the application and, in the alternative, asked that the matter be stayed pending resolution of State v. hartog, No. 88-603. Hartog, like the present case, tests the constitutionality of section 321.445.

On December 16, 1988, an order was en-

tered for the court which chose the alternative suggested by the State; the present action was stayed. This submission is upon defendant's application to reconsider.

The matter has been submitted to and considered by Justices Harris, Schultz and Snell. It is determined that the order entered for the court on December 16, 1988, was correct. It should be, and is, ratified and confirmed.

Dated this 23rd day of February, 1989.

THE SUPREME COURT OF IOWA

By /s/ David Harris
David Harris, Justice

Copies to:

Attorney General
Attn: Mark Hunacek
Criminal Appeals
Hoover Bldg.
L O C A L

Marshall County Attorney
Marshall County Courthouse
Marshalltown, IA 50158

Linda Diane Clark
306 S. 2nd Ave.
Marshalltown, IA 50158

Clerk of District Court
Marshall County Courthouse
Marshalltown, IA 50158

APPENDIX A CONT.

IN THE SUPREME COURT OF IOWA

No. 88-1524

Marshall District Court No. 4100-0488

ORDER

STATE OF IOWA,

Plaintiff-Appellee,

FILED

DEC 16 1988

vs.

LINDA DIANE CLARK,

Defendant-Appellant.

The defendant-appellant has applied for discretionary review of a district court decision convicting her of violating the mandatory seatbelt statute, Iowa Code section 321.445. She alleges the statute is unconstitutional.

The State requests that the application for discretionary review be denied or, in the alternative, that the case be continued pending disposition of the case of State v.

Hartog, No. 88-603, currently pending, which raises the issue of the constitutionality of the statute.

Upon consideration of the application and resistance, IT IS ORDERED that this matter be stayed in district court and continued in this court pending disposition by this court of State v. Hartog, No. 88-603.

Dated this 16th day of December 1988.

/s/ J L Larson
J. L. Larson, Justice

Copies to:

Marshall County Attorney
Marshall County Courthouse
Marshalltown, IA 50158

Linda Diane Clark
306 South Second Avenue
Marshalltown, IA 50158

Clerk of District Court
Marshall County Courthouse
Marshalltown, IA 50158

APPENDIX A CONT.

IN THE IOWA DISTRICT COURT FOR
MARSHALL COUNTY

STATE OF IOWA,

Plaintiff

vs.

LINDA DIANE CLARK,

Defendant

FILED

88 SEP 22 PM 3:04

CRIMINAL #4100-0488

O R D E R

NOW, TO-WIT, on this 30th day of August, 1988, there is a hearing incidental to the defendant filing a Notice of Appeal from a jury verdict of guilty entered against her herein on July 1, 1988, on a charge of failure to wear a safety belt in violation of Section 321.445, The Code. The Court receives the appeal briefs of the defendant, as well as counsel for the State of Iowa. The Court hears the oral arguments of both parties, reviews the Magistrate's notes from trial and being fully advised in the prem-

ises, FINDS,

The defendant was the passenger in a 1974 Honda Automobile which was being driven by her daughter on April 26, 1988, at approximately 6:40 p.m. when it was stopped by Officer Terry McCrary of the Marshalltown Police Department. Officer McCrary testified at trial that he stopped the vehicle because as he was traveling behind the vehicle on south third avenue he could see that the passenger was not wearing a seat belt. He further testified that he observed the buckle dangling from the roof of the vehicle above the head of the passenger. He testified that he continued to follow the vehicle from High Streed and South 3rd Avenue to an area past Landon & Landon on South 3rd avenue where he pulled the vehicle over by use of his red lights and horn.

Officer McCrary testified that during the five blocks in which he continued to observe the defendant he did not see her put her seat belt on at any time, nor did he observe vehicle stop for any purpose. As he exited his squad car to approach the stopped vehicle, Officer McCrary testified that he first observed an "anti seat belt bumper sticker" on the car. That upon speaking with the driver of the vehicle, she produced a doctor's exemption from wearing a seat belt which the officer accepted. However, the passenger kept interfering as the officer spoke with the driver and she repeatedly told the officer that they did not have to wear safety belts. Defendant informed the officer that she had a subsection b exemption which pertains to people "actively engaged in work who are required to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not ex-

from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed twenty-five miles per hour between stops." Section 321.445(2) (b), The Code. Officer McCrary testified that he asked the defendant what type of work she was engaged in and she replied that she was engaged in teaching her daughter how to drive a motor vehicle. He further testified that he observed no business stickers on the car. It's occupants were not wearing any uniforms and the defendant did not present a business card for the officer. He testified that the vehicle was equipped with safety belts and the car was not old enough to be exempt under the law. He also testified that in the five blocks during which he observed the vehicle he never saw it stop or any passenger alight therefrom for any purpose.

The defendant testified at trial that on the day in question her daughter was driving the 1974 Honda when it was stopped by the Officer. She further testified that when the officer approached the vehicle he said "that bumper sticker may be all well and good, but you have to wear a seat belt." She also testified that the distance she and her daughter travelled round trip was approximately 20 blocks, that they stopped 10 times and she exited and entered the vehicle at least 4 times on this trip. She further testified that she was engaged in the occupation of teaching her daughter how to drive and that she told the officer she was exempt.

Based upon the foregoing evidence in summary, the jury found the defendant guilty beyond a reasonable doubt and the defendant appeals that decision asking the Court to

reverse the jury's decision for the following reasons: (1) that the statute is unconstitutional; (2) the officer had no probable cause to stop defendant's vehicle; (3) the enforcement of the statute violates the equal protection clause of the United States and Iowa Constitutions. Moreover, at hearing, the defendant requests a new trial for the reasons that (1) Officer McCrary communicated with one of the jurors after they were told by the Magistrate not to speak with anyone connected with the trial; (2) During jury instructions the magistrate overemphasized the fact that she was a pro se defendant; (3) The jury misunderstood the subsection under which she was claiming an exemption; (4) She was not allowed to challenge the constitutionality of the law because the jury was denied the right to hear

and view evidence pursuant to the State's Motion in Limine and the Magistrate's Order granting said motion.

CONCLUSIONS OF LAW

The Court will first address the constitutional issues raised by the defendant in her written brief. Section 321.445 requires all motor vehicles, except motorcycles and motorized bicycles, newer than 1966 model year to be equipped with safety belts and safety harnesses. Moreover, subsection 2 of Section 321.445, requires:

> "The driver and front seat occupants of a type of motor vehicle which is subject to registration in Iowa, . . .shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state except that a child under six years of age shall be secured as required under section 321.446."

Then six exceptions to said requirement are outlined in the Statute, one of which is

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subdivision (b), which states that:

> "The driver and front seat occupants of a motor vehicle who are actively engaged in work which requires them to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed twenty-five miles per hour between stops."

In view of the fact that defendant/appellant has not demonstrated that the statute in question affects or impinges upon any fundamental constitutional right such as due process, right to travel, privileges or immunities, etc., or that it creates a suspect classification which denies her equal protection under the law, the rational basis analysis will be utilized by the Court in determining the constitutional issues raised by the defendant. As such, the question which must be addressed by the Court is whether or not the Statute is a rational exercise of the police power.

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The Iowa Supreme Court has traditionally held that driving is a privilege and not a right. State v. Holt, 261 Iowa 1089, 156 NW2d 884, 887. Moreover, the Supreme Court has stated that given the hazards of motor vehicle travel, the Court "should be slow to strike down any legislation designed to alleviate at least some of the attendant hazards." Supra. The statute is presumed constitutional and the burden of proving the statute unconstitutional beyond a reasonable doubt is upon that person who asserts that it is unconstitutional. If there is any reasonable basis for the statute's existence, it's constitutionality should be upheld. Moreover, the reviewing court should liberally construe the statute to uphold it's constitutionality. Spurbeck v. Strattton, 252 Iowa 279, 289, 106 NW2d

660,663.

The law in the instant case is intended to apply to all people traveling on the public roadways of the State of Iowa. It applies equally to citizens of the State, as well as to those individuals traversing the State by means of motor vehicles on the public roadways. Clearly the intent of the statute is to prevent or diminish the number of injuries or deaths occasioned by motor vehicle accidents upon the public roadways and as such it falls clearly within a valid exercise of the police power of the State of Iowa. In view of the fact that driving in the State of Iowa has traditionally been construed by the Iowa Supreme Court to be a privilege, rather than a right, the legislature may reasonably act to condition the exercise of the privilege to

drive by requiring motorists and their passengers in the front seats to buckle up. This Court is satisfied that there is a rational basis for the law and as such it constitutes a rational exercise of the police power by the Iowa Legislature. Hence, the Statute is not unconstitutional. Likewise, since the Statute does not create a suspect class of people, one of whom the defendant would be, the Statute does not appear to violate the equal protection clause of the U.S. Constitution either.

The defendant further argues in her brief that Officer McCrary did not have probable cause to stop the vehicle in which she was riding. However, Officer McCrary testified at trial that as he drove behind the vehicle in which the defendant was a passenger he could readily observe through the

window that the defendant was not wearing a seat belt and thats why he stopped the car. So long as the Officer had reasonable grounds to believe that criminal activity was afoot, ie. defendant wasn't wearing her seat belt, he had sufficient grounds to stop the motor vehicle in which defendant was a passenger. State v. Stevens, 394 NW2d 388.

At hearing on Appeal the defendant argued four bases upon which the jury verdict should be reversed and she should be granted a new trial. However, the defendant presented no evidence to the Court concerning any of the grounds alleged, except for the fact that she was not allowed to present evidence challenging the constitutionality of the statute to the jury. The Court, having previously herein found the Statute constitutional, will address the remaining three

arguments made by defendant.

Defendant argues that Officer McCrary was observed talking to a juror during the recess of the Court and that said juror did not report said communication to the Court. The defendant has presented no evidence with regard to the nature of the conversation between the officer and the juror, nor has she demonstrated that the conversation affected the jury's verdict. Without sufficient evidence concerning what impact, if any, such communication between Officer McCrary and the juror had on the verdict the Court will not reverse the jury's verdict herein. Furthermore, the defendant alleges, but does not prove by any objective testimony or evidence, that the magistrate prejudiced her case by overemphasizing the fact that she was pro se. She merely believes his state-

ments to the jury may have had an effect on their verdict. Likewise, she argues that the jury may have misunderstood the exemption which she was claiming applied to her. Having reviewed the evidence and the law, this Court is satisfied that the jury verdict herein comports with the evidence and the law and should not be reversed.

IT IS, THEREFORE, THE ORDER OF THE COURT that the jury verdict of guilty entered herein on July 1, 1988, should be and is hereby ordered affirmed.

Costs on appeal are hereby ordered taxed against the defendant/appellant and judgment is hereby ordered entered against her accordingly.

Clerk is hereby ordered to serve a copy of this Order upon parties and counsel of record.

Dated at Marshalltown, Iowa, this 22nd day of September, 1988.

/s/ Sandra J. Holien
Judge, District Associate Court

CC: Defendant
Mr. Paul Crawford
Magistrate Pat Wilson
Court file
File

APPENDIX A CONT.

IN THE IOWA DISTRICT COURT FOR
MARSHALL COUNTY

STATE OF IOWA, Case: 4100-0488

vs. FILED '88 JUL 11 A11:13

LINDA CLARK,

Defendant.

O R D E R

NOW, ON THIS 11th day of July, 1988, this Court was served with a copy of a Notice of Appeal filed by the Defendant in this matter. Jury trial of this case was held on July 1, 1988 from approximately 1:00 p.m. to 5:20 p.m. at which time the jury returned it's verdict in open court. The Defendant was convicted of the offense of failure to wear a safety belt and the fine, as mandated by the Iowa Legislature, was imposed. The Defendant was advised of her right to appeal.

This Court kept minutes of evidence, however, the Defendant privately retained a

Certified Shorthand reporter, Brenda Ellefson.

If the parties will advise this Court, in writing, as to whether they wish me to transcribe my notes or if they want Ms. Ellefson to type her notes, I will maintain my notes in my files.

The Clerk of Court should bring this matter to the attention of the Associate District Court or District Court for further proceedings. Clerk copy for all parties.

/s/ Patrick L. Wilson
Patrick L. Wilson, Magistrate

APPENDIX A-3

IN THE DISTRICT COURT FOR THE STATE OF IOWA

IN AND FOR MARSHALL COUNTY

STATE OF IOWA,

Plaintiff; Case: 4100-0488

vs. FILED '88 JUN 10 A9:04

LINDA CLARK, MOTION FOR ADVANCE

Defendant. RULING ON EVIDENCE

COMES NOW DEFENDANT, Linda Clark and states: It is Defendants intention to admit the following evidence of material fact, the interests of justice will best be served by admission. Defendant now asks the Court to rule that the following evidence is admissable.

1. PERFORMANCE OF LAP/SHOULDER BELTS, National Transportation Safety Board dated 7-28-86 & 3-1-88, 800 Independence Ave. S.W., Washington D.C. 20594

2. FARS DATA, National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington, D.C. 20590

APPENDIX A-3 CONT.

3. UPDATE ON GM LIFE BELT USER INSURANCE PROGRAM, General Motors Corporation, 3044 West Grand Boulevard, Detroit, Michigan 48202

4. NECK INJURY TO CAR OCCUPANTS USING SEAT BELTS, 29th Annual Proceedings American Association For Automotive Medicine October 7-9, 1985, Washington, D.C.

5. SAE TECHNICAL PAPER SERIES, 400 Commonwealth Drive, Warrendale, PA. 15096 Passenger Car Meeting Troy, Michigan June 7-10, 1982.

6. TRAFFIC SAFETY, National Safety Council, Nov/Dec 1987 & May/June 1988, 444 N. Michigan Ave., Chicago, Ill. 60611 also ACCIDENT FACTS 1987 EDITION.

7. THE AIR BAG INFORMATION CENTER INC., 417 6th St. S.E., Washington D.C. 20003 letter by Robert R. Tiernan dated 12-18-85 copies to Attendees of December 11, 1985 "PROTECT COMPANY CAR DRIVERS SEMINAR

8. WHO LIVE AT 5, V.C.R. recording of May 10, 1988, 13 On Your Side 1801 Grand Ave., Des Moines, Iowa 50308

9. NEWSPAPER AND MAGAZINE ARTICLES with written Notarized opinion on ultimate issue to be decided.

It is not necessary that evidence shall bear directly upon the issue; but it is admissable when it tends to prove or forms a

link in the chain of proof. STATE V. HINKLE, 6, Iowa 380 1874, 6 Clarke 380.

Relevant evidence must have a tendency to make more or less probable a fact "that is of consequence to the determination of the action"STATE V. CLAY, 213 N.W.2d 473, 477 (Iowa 1973).

As per IOWA RULES OF EVIDENCE not limited to but at numbers 8, 9 and 24 of hearsay rule exceptions Defendant asks the Court to rule admissibility of the above relevant evidence more probative on the point for which it is offered than any other evidence which the proponent can procure.

RESPECTFULLY SUBMITTED

/s/ Linda Clark
Linda Clark
306 South Second Avenue
Marshalltown, IA. 50158

Copies to:

APPENDIX A-3 CONT.

Clerk of Court Marshall County

"Freedom First in Iowa"

Marshall County Attorney

PROOF OF SERVICE

/s/ Linda Clark

APPENDIX A-4

IN THE DISTRICT COURT FOR THE STATE OF IOWA

IN AND FOR MARSHALL COUNTY

STATE OF IOWA,

Plaintiff; Case: 4100-0488

vs. FILED '88 JUN 22 A9:02

LINDA CLARK UNCONSTITUTIONALITY

Defendant.

COMES NOW DEFENDANT, Linda Clark a threatened citizen, in judgment states: That Iowa Code Section 321.445 violates Article 1 Section 1, 2, 6, 8, 9 and 25 of the Iowa Constitution, whereby shall be void as to Article XII., Section 1. That Iowa Code Section 321.445 violates Amendments 4, 5, 9 and 14 of the United States Constitution because of the matters hereafter stated:

1. The enactment of the statute was arbitrary and capricious abuse of discretion acted upon precipitately and without ade-

quate study.

2. It is the duty of Courts to be watchful for constitutional rights of citizens and against any stealthy encroachments thereon. Coolidge v. New Hampshire, 91 S.Ct. 2022, 403 U.S. 443, 29 L.Ed.2d 564, rehearing denied 92 S.Ct. 26, 404 U.S. 874, 30 L. Ed. 2d 120.

3. Where legislation is prohibited by the Constitution, it must be disregarded by all Courts recognizing the Constitution as the paramount law of the land. Wolff v. City of New Orleans, 103 U.S. 358, 26 L.Ed. 395.

4. Statute which oversteps constitutional boundaries cannot be upheld, even if Court should think that statute embodies valuable social plan and be in sympathy with its purpose and intended result. Railroad

Retirement Bd. v. Alton R. Co., 55 S.Ct. 758, 295 U.S. 330, 79 L.Ed. 1468.

5. The framers of the Constitution and the people who adopted it must be understood to have employed words in their natural sense and to have intended that which was said. Gibbons v. Ogden, 22 U.S. 1, 9 Wheat 1, 6 L.Ed. 23.

6. A Constitutional provision should not be construed so as to defeat its effective operation and suppress the mischief at which it was aimed. Jarrolt v. Moberly, 103 U.S. 580, 26 L.Ed. 492.

7. The 14th Amendment U.S. Constitution, is not intended to protect individual rights against individual invasion, but to nullify and make void all State legislation and State action which impairs the privileges of citizens of the United States, etc.; and

therefore congress has no authority to create a code of municipal law for the regulation of private rights. The Civil Rights Cases, 3 S.Ct. 18, 109 U.S. 3, 27 L.Ed. 835 "The 14th Amendment after all was clearly designed to place limits on State action adverse to individuals." Entitlement, Enjoyment, and Due Process of Law, 1974 Duke L. J. 89, 111.

8. Statute valid as to one set of facts may be invalid as to another, and statute valid when enacted may become invalid by changed conditions. Nashville C. & St. L. Ry. V. Walters, 55 S.Ct. 486, 294 U.S. 405, 79 L.Ed. 949.

9. Constitutional deprivations may not be justified by some remote administrative benefit to State. Harman v. Forssenius, 85 S.Ct. 1177, 380 U.S. 528, 14 L.Ed. 2d 50.

10. State is without standing as parent of its citizens to invoke due process clause of 5th amendment and bill of attainder clause of Article 1 against federal government. State of S.C. v. Katzenback, 86 S.Ct. 803, 383 U.S. 301, 15 L.Ed. 2d 769.

11. We have not yet come to the point where government is thought to be responsible for every personal misfortune; persons are at least sometimes accountable for their plight. People v. Fries 42 Ill. 2d 446, 250 NE 2d 149 (1969). Shapiro v. Thompson 394 U.S. 618, 642-43 (1969) Kent v. Dulles 357 U.S. 116, 125-26 (1958).

12. "In a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State." Abood v. Detroit BD. of Educ. 97 S.Ct. 1782, 1799 (1977). Wooley v. Maynard 97 S.Ct. 1428

13. A government decision not to protect individuals from private infringements will plainly be a species of unconstitutional State action. Where the people have withdrawn authority previously conferred, neither Congress nor Courts can assume the right to continue to exercise it. U.S. v. Chambers 54 S.Ct. 434, 291 U.S. 217, 78 L.Ed. 763, 89 A.L.R. 1510.

14. Constitution was intended to preserve practical and substantial rights, not to maintain theories. City of El Paso v. Simmons, 85 S.Ct. 577, 397 U.S. 497, 13 L.Ed. 2d 446, rehearing denied 85 S.Ct. 879, 380 U.S. 926, 13 L.Ed. 2d 813.

WHERE AS there is no rational relationship between seat belt use and public safety on the highway and the body restraint mandated by law to use is ineffective in some

life situations; Defendant asks the Court to return liberty and the right to pursuing and obtaining safety and happiness as Article 1 Section 1 of the Iowa Constitution states.

RESPECTFULLY SUBMITTED

/s/ Linda Clark

Linda Clark
306 South Second Avenue
Marshalltown, IA. 50158

Copies to:

Clerk of Court Marshall County

Marshall County Attorney

Attorney General Thomas J. Miller

"Freedom First in Iowa"

PROOF OF SERVICE

/s/ Linda Clark

APPENDIX A-5

IN THE IOWA DISTRICT COURT

FOR MARSHALL COUNTY

STATE OF IOWA, Case: 4100-0488

vs. FILED '88 JUN 22 P4:06

LINDA DIANE CLARK, RULING ON MOTION FOR ADVANCE RULING EVIDENCE AND MOTION IN LIMINE

Defendant.

NOW, ON THIS 22nd day of June , 1988, the Defendant having filed a "Motion for Advance Ruling on Evidence" and the State having filed a Resistance to such Motion and also seeking a Motion in Limine on the items of evidence listed in the Defendant's Motion, the matter proceeded to hearing. The Defendant appeared pro se, the State appeared by Assistant County Attorney Paul Crawford. Arguments without evidence were presented to the Court. The Court being fully advised in the premises finds that the Motion in Limine filed by the State should be sustained. The

evidence proposed to be offered by the Defendant is, by her own admission, relevant to suggest that seat belt usage is not safe.

The Defendant is charged with a violation of 321.445(2) of The Code (seat belt law). The file clearly reflects that the Defendant objects to the law both constitutionally and for safety reasons. Those questions are not before the jury in this matter. The jury's duty is to ascertain the facts, the Court instructs on the law, rightly or wrongly the State argues that the Defendant should take her complaints to the Iowa Legislature and that the jury not be allowed to receive those items which the Defendant seeks advance ruling on.

Clearly, the evidence proposed by the Defendant does not appear to be relevant to any issue in this case. The Defendant does

not suggest that the evidence pertains to the exemptions listed in 321.445(2) (a-f) The Code and a review of the list fails to lead this Court to any conclusion other than that the Defendant's argument better lies with the Iowa Legislature, therefore:

IT IS ORDERED that the Motion in Limine filed by the State of Iowa is sustained and the Defendant is hereby admonished to make no mention, at any time in the presence of the jury, of any of the matters listed in her Motion for Advance Ruling on Evidence filed herein. The facts presented in this case shall be limited to only those matters that are relevant and material to the issues at hand and Section 321.445. The safety use of seat belts and the constitutionality of this particular section of the Code is not a matter that is before the jury and no evidence

on such subjects shall be allowed during the trial to the jury.

Clerk copy for Paul Crawford and Linda Diane Clark.

/s/ Patrick L. Wilson
Patrick L. Wilson,
Magistrate

APPENDIX B

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

(Emphasis added to pertinent section)

The Ninth Amendment of the United States Constitution provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment of the United States Constitution provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(Emphasis added to pertinent section)

APPENDIX C

The State statute in question provides:

CHAPTER 1009
MOTOR VEHICLE SAFETY BELTS
S.F. 499

AN ACT establishing applicable standards for motor vehicle safety belts and safety harnesses, mandating safety belt and safety harness use with certain exceptions, requiring the establishment of education programs, and making penalties applicable.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA: Section 1. Section 321.210, Code 1985, is amended by adding the following new unnumbered paragraph: NEW UNNUMBERED PAR AGRAPH. The department shall not consider nor assess points for violations of section 321.445 in determining a motor vehicle license suspension, revocation or cancellation. Section 2. Section 321.445, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

321.445 SAFETY BELTS AND SAFETY HARNESSES - USE REQUIRED. 1. Except for motorcycles or motorized bicycles, 1966 model year or newer motor vehicles subject to registration in Iowa shall be equipped with safety belts and safety harnesses of a type and installed in a manner approved by rules adopted by the department pursuant to chapter 17A. The department shall adopt rules regarding the types of safety belts and safety harnesses required to be installed in motor vehicles and the manner in which they are installed. The rules shall conform with federal motor vehicle safety standard numbers 209 and 210 as published in 49 C.F.R. §§ 571.209-571.210 and with prior federal motor vehicle safety standards for seat belt assemblies and seat belt

assembly anchorages applicable for the motor vehicle's model year. The department may adopt rules which comply with changes in the applicable federal motor vehicle safety standards with regard to the type of safety belts and safety harnesses and their manner of installation.

2. The driver and front seat occupants of a type of motor vehicle which is subject to registration in Iowa, except a motorcycle or a motorized bicycle, shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state except that a child under six years of age shall be secured as required under section 321.446. This subsection does not apply to:
a. The driver or front seat occupants of a motor vehicle which is not required to be equipped with safety belts or safety harnesses under rules adopted by the department.

b. The driver and front seat occupants of a motor vehicle who are actively engaged in work which requires them to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed twenty-five miles per hour between stops.

c. The driver of a motor vehicle while performing duties as a rural letter carrier for the United States postal service. This exemption applies only between the first delivery point after leaving the post office and the last delivery point before returning to the post office.
d. Passengers on a bus.

e. A person possessing a written certification from a physician on a form provided by the department that the person is unable to wear a safety belt or safety harness due to physical or medical reasons. The certification shall specify the time period for which the exemption applies. The time period shall not exceed twelve months, at which time a new certification may be issued.
f. Front seat occupants of an authorized emergency vehicle while they are being transported in an emergency. However, this exemption does not apply to the driver of the authorized emergency vehicle.

During the six-month period from July 1, 1986 through December 31, 1986, peace officers shall issue only warning citations for violations of this subsection, except this does not apply to drivers subject to the federal motor carrier safety regulation 49C.F.R.§392.16 The department, in cooperation with the department of public safety and the department of public instruction, shall establish educational programs to foster compliance with the safety belt and safety harness usage requirements of this subsection.
3. The driver and front seat passengers may be charged separately for improperly used or nonused equipment under subsection 2. The owner of the motor vehicle may be charged for equipment violations under subsection 1.
Sec. 3. Section 321.555, subsection 2, Code 1985, is amended to read as follows:
2. Six or more of any separate and distinct offenses within a two-year period in the operation of a motor vehicle which are required to be reported to the department by section 321.207 or chapter 321C, except equipment

violations, parking violations as defined in section 321.210, violations of registration laws, violations of sections 321.445 and 321.446, operating a vehicle with an expired license or permit, failure to appear, weights and measures violations and speeding violations and speeding violations of less than fifteen miles per hour over the legal speed limit.

Approved February 20, 1986